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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/775,307	02/01/2001	Bernd Burchard	55586/45107	8232
21874	7590	10/24/2003	EXAMINER	
EDWARDS & ANGELL, LLP P.O. BOX 9169 BOSTON, MA 02209			ABEBE, DANIEL DEMELASH	
			ART UNIT	PAPER NUMBER
			2655	
DATE MAILED: 10/24/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/775,307	BURCHARD ET AL.
	Examiner	Art Unit
	Daniel D Abebe	2655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_ .
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-28 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_ .
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> . | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1, 2, 4-6, 22, 23 and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Bush (6,466,677).

As to claim 1, Bush teaches a portable data recording/playback device, comprising output devices for audio data with data readout device with a processor for controlling of the operation of the portable playback device, wherein all the output device, memory and the processor are contained in one unit in the form of a headband (abstract; Fig.2). note that the recoding part is inherent in the playback device of Bush as it is commonly practiced in the technology.

As to claim 2, Bush teaches an electronic transducer (Fig.2, 46 and 44).

As to claim 4, Bush teaches where the audio data includes audio data compressed using plurality of compression technique, inherently, including the conventional MP3 audio data (Col.4, lines 33-46).

As to claim 5, see figure 5 for supplying power to the playback system.

As to claim 6, Bush teaches buttons for interacting with the device (Col.4, lines 47-59).

Claims 22, 23 and 26 are analogous to the claims above and are rejected for the foregoing reasons by Bush.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 3, 7, 10-21, 24, 25, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bush.

Regarding claims 3, 12, 14, 24 and 27, Bush doesn't teach a microphone. Official notice is taken that headbands containing microphone are old and well known and it would be obvious to put microphone in Bush's headband for receiving speech.

Regarding claims 7, 10, 25 and 28, Bush teaches a headband containing a user interface as well as a microprocessor for controlling the functions of the playback system, but Bush does not teach speech interface including a recognition means. Official notice is taken that user interface using speech command as a system control means is notoriously well known and it would have been obvious to one of ordinary skill in the art to include or substitute Bush's user interface with speech interface for the purpose of convenience and eliminate the user's physical interaction with the device.

As to claim 11, Bush teaches where the output devices are contained in a headband.

As to claim 13, Bush teaches an electronic transducer (Fig.2, 46 and 44).

As to claim 15, the standard MP3 audio data is inherent in Bush (Col.4, lines 33-46).

As to claims 16-21, Bush teaches push buttons, decoding means and display (Col.4, lines 47-59; Fig.3, 66, 94).

3. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bush as applied above, and further in view of Guan (5,099,519).

As to claims 8-9, Bush doesn't teach where the headband contains means for transmitting/receiving. However, Guan teaches a headband containing an interface for transmitting and a receiving communication data with an external device (Fig.2 and 5). It would have been obvious to one of ordinary skill in the art to combine the two teachings for allowing data transmission to other devices.

### ***Conclusion***

### ***Information Disclosure Statement***

The information disclosure statement filed on 5/21/2001 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Webb (6,282,154).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel D Abebe whose telephone number is 703-308-5543. The examiner can normally be reached on monday-friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doris To can be reached on 703-305-4827. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-0377.

DANIEL ABEBE  
PRIMARY EXAMINER



October 16, 2003